

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

NOTICE OF REMOVAL

Defendant The Coliseum, Inc., d/b/a El Coliseo, “Defendant” herein, hereby gives Notice of Removal of the above-captioned case, currently pending in the 2nd County Court at Law of Travis County, Texas as Cause No. C-1-CV-15-006139 (the “State Court Action”), to the United States District Court for the Western District of Texas, Austin Division. Removal is based on 28 U.S.C. § 1331 (federal question jurisdiction) and is authorized by 28 U.S.C. §§ 1441 and 1446.

I. STATE COURT ACTION

1. On July 23, 2015, Plaintiffs, Yair Joaquin Granados and Jose Heriberto Escobedo Camargo (collectively “Plaintiffs”), filed *Plaintiffs’ Original Petition* (the “Petition”) in the County Court at Law Number 2, Travis County, Texas.

2. In the Petition, Plaintiffs bring a claim for alleged violations under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.* Plaintiffs seek actual damages, statutory damages, post-judgment interest, attorney’s fees and costs.

3. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, orders and other papers filed in the State Court Action and obtained by Defendant are attached hereto and marked as composite **Exhibit “A”** and incorporated herein by reference.

II. TIMELINESS OF NOTICE OF REMOVAL

4. This Notice of Removal is timely under 28 U.S.C. § 1446(b) because it is filed within thirty (30) days of service of Plaintiffs' Original Petition.

III. FEDERAL QUESTION JURISDICTION

5. Removal is proper because this case is a civil action involving a federal question over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1331. Plaintiffs' claim as set forth in their Original Petition, arises under the FLSA, 29 U.S.C. §§ 201, *et. seq.*

6. Further, the Court has supplemental jurisdiction over all other causes of action in this matter under 28 U.S.C. § 1337(a) because they all derive from a common nucleus of operative facts.¹

IV. PROCEDURAL REQUIREMENTS

7. Venue for this Removal is proper in the U.S. District Court for the Western District of Texas, Austin Division because this district and division includes Travis County, Texas—the location of the pending State Court Action.²

8. Defendant is the only defendant currently in this action.

¹ See e.g. *Bennett v. Drive Fin. Servs., LP*, No H-08-1821, 2008 U.S. Dist. LEXIS 52114, at *2 (S.D. Tex. July 8, 2008) (denying motion to remand holding removal based on federal question was proper where plaintiff alleged a FCRA claim and exercising supplemental jurisdiction over state law claims as well).

² See 28 U.S.C. § 1441(a); 28 U.S.C. 124(d)(1) (stating that the Austin Division of the Western District includes Travis County).

9. In accordance with 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Plaintiffs are being provided with written notice of removal, and a copy of this Notice of Removal is being filed with the Clerk of the County Court at Law Number 2 of Travis County, Texas.

V. CONCLUSION

WHEREFORE, Defendant removes this action from the County Court at Law Number 2 of Travis County, Texas to the United States District Court for the Western District of Texas, Austin Division, so that this Court may assume jurisdiction over the cause as provided by law.

Respectfully submitted,

By: 

JOHN W. BOWDICH
State Bar No. 00796233
TODD J. LILES
State Bar No. 00796956

THE WILLIS LAW GROUP
10440 N. Central Expressway, Suite 520
Dallas, Texas 75231
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tliles@thewillislawgroup.com

ATTORNEYS FOR DEFENDANT
THE COLISEUM INC D/B/A EL COLISEO

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September, 2015, I electronically filed the foregoing document with the United States District Court for the Western District of Texas, Austin Division by using the CM/ECF system. I certify that the following parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system:

AUSTIN KAPLAN
KAPLAN LAW FIRM, PLLC
98 San Jacinto Blvd., Suite 540
Austin, TX 78701

ATTORNEYS FOR PLAINTIFF

VIA: ELECTRONIC SERVICE

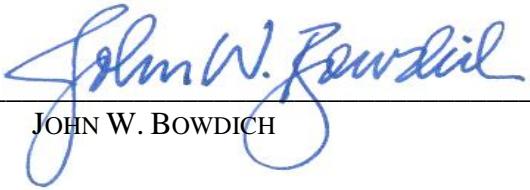
By: 
JOHN W. BOWDICH

EXHIBIT “A”

**TRAVIS COUNTY**
County Clerk Public Access**CIVIL » DETAILS****CIVIL**[\[Back\]](#)**DOCUMENT INFORMATION**

Cause Number	C-1-CV-15-006139
Case Type	COT

PARTIES

Defendant	THE COLISEUM INC D/B/A EL COLISEO
Plaintiff	GRANADOS, YAIR

DOCUMENTS

Document ID	Date Received	Document Type	Document Category	Document Desc	View
1082764	07/23/2015	3000		OPN:CV ORIGINAL PETITION	
1082765	07/24/2015	3601		ISS:CV CITATION	
1089287	08/14/2015	3700		RET:CV CITATION RET SERVED	

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FILED FOR RECORD

2015 AUG 14 PM 4:

DANA DEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS**CITATION****THE STATE OF TEXAS**

To:

THE COLISEUM INC D/B/A EL COLISEO
By serving its registered agent GABRIELA ROSALES
5739 EMROSE TERRACE
DALLAS, TX 75227

Defendant, in the hereinafter styled and numbered cause:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and plaintiff's original petition, a default judgment may be taken against you. A copy of the plaintiff's original petition accompanies this citation, in cause number **C-1-CV-15-006139**, styled **GRANADOS ET AL vs EL COLISEO**

Filed in **COUNTY COURT AT LAW #2**, Heman Marion Sweatt Travis County Courthouse, 1000 Guadalupe, Austin, Texas on **July 23, 2015**.

Given under my hand and seal of Dana DeBeauvoir, County Clerk on **July 24, 2015**.

County Clerk, Travis County, Texas
 P.O. Box 149325, Austin, Texas 78714-9325

By Deputy:



A.M. PEREZ



Plaintiff Attorney
AUSTIN KAPLAN
98 SAN JACINTO BLVD, STE 450
AUSTIN, TX 78701

----- OFFICER'S RETURN -----

Came to the hand on the _____ day of _____, 20____ at
 _____ o'clock _____ M. Executed at _____ within County of
 _____ at _____ o'clock _____ M on the _____ day of _____, 20____,
 by delivering to the within named **See Affidavit Attached**

a true copy of this citation together with the accompanying copy of the petition having first attached such copy of such petition to such copy of citation and endorsed on such copy of citation the date of delivery.

To certify which witness my hand officially.

 _____ of _____ County, Texas
 By Deputy _____

FEES PAID \$ _____

C-1-CV-15-006139
01C - 000057132

CAUSE NUMBER C-1-CV-15-006139

YAIR JOAQUIN GRANADOS AND
JOSE HERIBERTO ESCOBEDO CAMARGO, on
Behalf of Themselves and Others Similarly Situated

VS.

THE COLISEUM, INC., D/B/A EL COLISEO

IN THE COUNTY COURT

AT LAW NO. 2

TRAVIS COUNTY, TEXAS

AFFIDAVIT OF DELIVERY

Came to my hand on: 7/30 2015 at 6:00 o'clock P. M.

- CITATION
- PLAINTIFFS' ORIGINAL PETITION
- CIVIL CASE INFORMATION SHEET
- NOTICE OF CONSENT
- TRANSLATOR'S CERTIFICATE
- NOTICE OF CONSENT
- TRANSLATOR'S CERTIFICATE

Executed by me on: 8/6 2015 at 5:46 o'clock P. M.

Executed at 5739 Emrose Terrace, within the
county of DALLAS, by delivering to **THE COLISEUM INC D/B/A EL COLISEO** by delivery to its
registered agent, **GABRIELA ROSALES**, in person, a true copy of the above-specified civil process with the date of
delivery endorsed thereon.

I am a person not less than eighteen (18) years of age, have never been convicted of a felony or a crime of moral turpitude, and no charge of a felony or a crime of moral turpitude is pending against me. I am not a party to or interested in the outcome of this case, am authorized by law, by the Supreme Court of Texas, or by written order of the Court to deliver citations and other notices, and am able to perform this service of process correctly pursuant to TRCP 103, 106, 107 and 536a. I swear that the statements and facts contained in this affidavit are true and correct and within my personal knowledge and experience.

Service Fee: \$

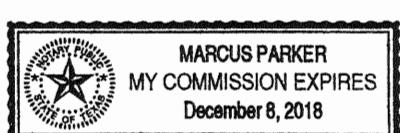
Ann Wixom
Ann Wixom
SCH 1343 (EXP. 10/31/17)

STATE OF TEXAS

VERIFICATION

Before me, a Notary Public, on this day personally appeared Ann Wixom, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements and facts therein contained are true and correct. Given under my hand and seal of office on this the _____ day of 8-7, 2015.

Ann Wixom
Notary Public, State of Texas



Filed: 7/23/2015 2:06:14 PM

Dana DeBeauvoir

Travis County Clerk

C-1-CV-15-006139

Adrianna Perez

NO. C-1-CV-15-006139

YAIR JOAQUIN GRANADOS and JOSE
HERIBERTO ESCOBEDO CAMARGO, on
Behalf of Themselves and Others Similarly
Situated,
Plaintiffs,

§ IN THE COUNTY COURT AT LAW

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V.

§ NO. 2

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PLAINTIFFS' ORIGINAL PETITION

COMES NOW, Yair Joaquin Granados and Jose Heriberto Escobedo Camargo (collectively "Plaintiffs"), Plaintiffs in the above styled and numbered cause, and file this Original Petition, complaining of The Coliseum Inc d/b/a El Coliseo ("Defendant"), and for cause of action would show as follows:

I. PARTIES, JURISDICTION, AND VENUE

1. Plaintiffs intend to conduct discovery under Level 2 of the Texas Rules of Civil Procedure.
2. Plaintiffs are individuals who reside in Austin, Travis County, Texas.
3. Defendant, The Coliseum Inc d/b/a El Coliseo, is a Texas domestic for-profit corporation that maintains its principal place of business in Texas. This Defendant may be served by serving its registered agent, Gabriela Rosales, at 5739 Emrose Terrace, Dallas, TX 75227.
4. This Court has subject matter jurisdiction because Plaintiffs' damages are in excess of the minimal jurisdictional limits of the Court and within the maximum jurisdictional limits of the

Court.

5. Plaintiffs seeks monetary relief over \$100,000 but not more than \$200,000.
6. Venue is proper in Travis County, Texas because it is the county in which all or a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred.

II.
FACTUAL BACKGROUND

7. Plaintiffs were employed as bartenders and bar backs in Defendant's night club, The Coliseum of Austin ("The Coliseum"). The Coliseum is located at 9111 FM Road 812, Austin, Texas 78719.
8. Plaintiff Granados worked for Defendant from approximately April 2014 to late November 2014.
9. Plaintiff Escobedo worked for Defendant from approximately July 2014 to late October 2014.
10. Defendant is an enterprise engaged in commerce or the production of goods for commerce within the meaning of the FLSA, and are obligated to pay its employees in accordance with the FLSA. Defendant was obligated to pay its employees in accordance with the FLSA at all times Plaintiffs worked for Defendant.
11. The Plaintiffs and those similarly situated were engaged in commerce while employed by the Defendant. Defendant has been an enterprise engaged in commerce or the production of goods for commerce within the meaning of the FLSA at all relevant times to this lawsuit and was obligated to pay its employees in accordance with the FLSA at all relevant times to this lawsuit.

III.
CAUSE OF ACTION: THE FAIR LABOR STANDARDS ACT

12. Plaintiffs adopt and incorporate herein by reference all preceding paragraphs.
13. The Defendant's conduct and practices violated the provisions of the FLSA, 29 U.S.C. § 201 et seq., including but not limited to violations of § 206(a). The above-described actions of the Defendant violated Plaintiffs' rights under the Fair Labor Standards Act, for which Plaintiffs are entitled to relief pursuant to 29 U.S.C. § 216(b).

IV.
CAUSE OF ACTION: MINIMUM WAGE ACT

14. Plaintiffs adopt and incorporate herein by reference all preceding paragraphs.
15. At all times relevant herein, Defendant was the employer of the Plaintiffs, within the meaning of the Texas Minimum Wage Act, Chapter 62, TEX. LABOR CODE, and the Defendant was subject to the requirements of the Texas Minimum Wage Act. During the Plaintiffs' employment, the Defendant failed to pay the Plaintiffs the required minimum wage in accordance with the Texas Minimum Wage Act. The Defendant's conduct and practices violated the provisions of the Minimum Wage Act.
16. The above-described actions of the Defendant violated the Plaintiffs' rights under the Texas Minimum Wage Act, for which Plaintiffs are entitled to relief pursuant to Texas Labor Code §62.201 and §62.205. As a result of the Defendant's actions, the Plaintiffs are entitled to relief provided under Texas Labor Code §62.201 and §62.205 for the Defendant's violations of the Texas Minimum Wage Act, including unpaid minimum wages, liquidated damages, post-judgment interest, costs and attorney's fees.

V.
COLLECTIVE ACTION ALLEGATIONS

17. Defendant employed bartenders and bar backs in addition to the Plaintiffs.
18. These other employees performed nearly identical job duties to those of the Plaintiffs.
19. Like Plaintiffs, these similarly situated workers were not paid the minimum wage as required by the FLSA and the Texas Minimum Wage Act.
20. Like Plaintiffs, these similarly situated workers are entitled to recover unpaid minimum wages.
21. The class of similarly situated employees consists of all bartenders and bar backs employed by Defendant for the past three years.

VI.
CONDITIONS PRECEDENT

22. All conditions precedent to filing this lawsuit have been met.

VII.
ATTORNEY'S FEES

23. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.
24. Plaintiffs are entitled to recover attorneys' fees and costs for bringing this action pursuant to 29 U.S.C. § 216(b) and Texas Labor Code §62.205.

VIII.
REQUEST FOR DISCLOSURE

25. Pursuant to Texas Rule of Civil Procedure 194, Plaintiffs request that Defendant disclose, within 50 days of the service of this request, the information or material described in Rule

194.2.

IX.
PRAYER

26. WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendant be cited to appear and answer herein, and that upon trial by a jury or this Court, Plaintiffs be granted judgment against Defendant within the jurisdictional limits of this Court for:

- (a) the amount of the Plaintiffs' unpaid minimum wage, and;
- (b) an equal amount in liquidated damages, and;
- (c) post-judgment interest as provided by law, and;
- (d) costs of court, attorney fees and expenses, and;
- (e) such other and further relief, at law or in equity, to which the Plaintiffs may justly be entitled.

Respectfully submitted,

KAPLAN LAW FIRM, PLLC



Austin Kaplan
Texas Bar No. 24072176
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Austin, TX 78701
Phone: (512) 553-9390
Fax: (512) 692-2788
akaplan@kaplanlawatx.com

COUNSEL FOR PLAINTIFFS

CAUSE NO. C-1-CV-15-006139

YAIR JOAQUIN GRANADOS and JOSE	§	IN THE COUNTY COURT
HERIBERTO ESCOBEDO CAMARGO, on	§	
Behalf of Themselves and Others Similarly	§	
Situated,	§	
Plaintiffs,	§	AT LAW NO. 2
	§	
v.	§	
	§	
THE COLISEUM INC d/b/a EL COLISEO	§	
Defendant.	§	TRAVIS COUNTY, TEXAS

DEFENDANT'S ORIGINAL ANSWER

COMES NOW Defendant, The Coliseum, Inc. d/b/a El Coliseo ("Defendant"), and files *Defendant's Original Answer*, and respectfully shows the Court the following:

GENERAL DENIAL

GD. Pursuant to TEX. R. CIV. P. 92, Defendant generally denies all allegations contained in *Plaintiffs' Original Petition*, including any amendments thereto.

PRAYER

WHEREFORE, for the foregoing reasons, Defendants respectfully request that this Court:

(1) dismiss Plaintiffs' Petition with prejudice; (2) deny Plaintiffs' demands and prayer for relief; (3) if applicable, award Defendant costs and reasonable attorneys' fees incurred in defense of this action under the FLSA, Texas Labor Code, or any unaccepted statutory offer of judgment or settlement; and (4) grant such other and further relief to which Defendant may be entitled.

Respectfully submitted,

By: 

JOHN W. BOWDICH
State Bar No. 00796233
TODD J. LILES
State Bar No. 00796956

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ATTORNEYS FOR DEFENDANT
THE COLISEUM INC D/B/A EL COLISEO

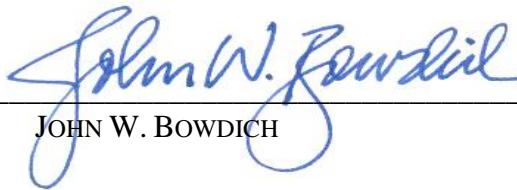
CERTIFICATE OF SERVICE

This instrument was served in compliance with Rules 21 and 21a of the Texas Rules of Civil Procedure on the 31st day of August, 2015, as follows:

AUSTIN KAPLAN
KAPLAN LAW FIRM, PLLC
98 San Jacinto Blvd., Suite 540
Austin, TX 78701

ATTORNEYS FOR PLAINTIFF

VIA: FACSIMILE (512) 692-2788

By: 

JOHN W. BOWDICH